

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DYNAMIC MACHINE WORKS INC.,)
Plaintiff)
vs) Docket No. 04-10525-WGY
MACHINE & ELECTRICAL)
CONSULTANTS, INC.)
Defendant)

AFFIDAVIT OF VENANZIORO FONTE

1. I am the President of Dynamic Machine Works, Inc. ("Dynamic") and have personal knowledge of the facts as stated herein.
2. Dynamic is engaged in the manufacture of precision components for military, aerospace, nuclear, chemical, oil and other major industries.
3. Machine & Electrical Consultants ("M&E") is engaged in the sales and service of CNC machine tools for metal cutting applications.
4. In anticipation of Dynamic receiving a contract to manufacture components for a large missile launch barrel, it solicited proposals from M&E for a CNC lathe that would be capable of machining 7 meter (approximately 23 feet) long round components within an accuracy of $\pm .0005"$ over its entire length.
5. Following extended discussions, on or about January 3, 2003, M&E submitted a proposal and specifications to Dynamic for the sale of the Johnford Lathe for \$355,000.00. (Exhibit 1).
6. On or about January 13, 2003, Dynamic issued a purchase order to M&E for the Johnford Lathe and other related equipment, (the "Purchase Order"). The delivery date for the

Johnford Lathe was to be on or about May 15, 2003. (Exhibit 2)

7. Included in the Purchase Order was the rental of a Johnford ST-60B lathe until the new Johnford Lathe arrived.
8. On or about February 28, 2003 Dynamic notified M&E of problems it was experiencing with the rented Johnford ST-60B lathe. Dynamic further advised that if these problems were not addressed in the new Johnford Lathe it would be rejected. (Exhibit 3).
9. In and around April 2003, Dynamic was notified that the anticipated May 15, 2003 delivery date would not be met and that delivery would occur in June.
10. In and around June 2003, Dynamic was notified that the anticipated June 2003 delivery date would not be met and that the Johnford Lathe would be finished and shipped in the middle of August.
11. By letter agreement dated July 2003 (the "Letter Agreement"), the parties agreed that Dynamic would not cancel the purchase order conditioned upon, among other things (1) receipt and approval of the factory performed accuracy test report; (2) a ship date of August 15, 2003; and (3) complete commissioning of the Johnford Lathe meeting all specifications of the M&E January 3, 2003 proposal, and addressing the problems identified in its February 28, 2003 communication, by September 19, 2003 (the "Commissioning Deadline"). (Exhibit 4).
12. M&E agreed that its failure to meet the Commissioning Deadline would result in a penalty of \$500.00 per day until complete commissioning was achieved.
13. The Johnford Lathe was delivered to Dynamic on or about October 9, 2003.
14. M&E did not meet the Commissioning Deadline and was unable to get the Johnford Lathe

to meet the specifications and correct the problems identified.

15. Specifically, the Johnford Lathe was not capable of meeting the repeatability and precision accuracy specifications and was unable to cut to the center of a work piece while using a 5" round cutting tool, as agreed.
16. The Johnford Lathe's failure to conform to the specifications and agreement of the parties substantially impairs the equipment's value to Dynamic.
17. Dynamic incurred expenses and damages relating to the inspection, receipt, transportation, care and custody of the Johnford Lathe, as follows:

Purchase of Steady Rest	\$45,000.00
Installation Labor	\$21,029.00
Rigger	\$ 5,800.00
Materials	\$ 1,644.00
Electrical	\$ 5,000.00
Building Modifications	\$ 7,000.00
Storage	\$10,000.00

18. By correspondence dated December 11, 2003, Dynamic notified M&E of its rejection or revocation of any acceptance of the Johnford Lathe for failure to timely make the machine operate in accordance with the specifications and the parties' agreement. (Exhibit 5).
19. Dynamic requested return of its down payment of \$29,500.00, as well as payment of the \$500.00 per day penalty in the amount of \$41,000.00.
20. Dynamic requested instructions as to the disposition of the Johnford Lathe and indemnity sufficient to cover the expense of complying with such instructions.

21. To date, M&E has not returned Dynamic's down payment, has not paid the \$500.00 day penalty, and has not provided instructions or indemnity all as requested.

Signed under the pains and penalties of perjury this 31st day of August 2004.

S/Venanzioro Fonte

Venanzioro Fonte